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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

CALIFORNIA DEPARTMENT OF TOXIC  
SUBSTANCES CONTROL,

Plaintiff,

v.

NO. CIV. S-02-2389 LKK/DAD

PAYLESS CLEANERS; COLLEGE  
CLEANERS; HEIDINGER CLEANERS;  
NORGE VILLAGE CLEANERS; CAVA,  
INC., a California corporation;  
LOBDELL CLEANERS; CITY OF CHICO;  
NORVILLE R. WEISS; JANET L. WEISS;  
PAUL A. TULLIUS; VICTORIA TULLIUS;  
ROBERT H. HEIDINGER; INEZ N.  
HEIDINGER; 5TH AND IVY, a general  
partnership; RICHARD C. PETERS and  
RAMONA W. PETERS, individually and  
as Trustees of the Peters Family  
Trust; BETTY M. ROLLAG; RANDALL  
ROLLAG; and TAMI ROLLAG,

O R D E R

Defendants.

\_\_\_\_\_  
AND RELATED COUNTER-CLAIMS.

\_\_\_\_\_  
Third party plaintiffs Richard Peters and Ramona Peters ("the  
Peters" or "plaintiffs") are defendants in a cost recovery suit

1 regarding perchloroethylene ("PCE") contamination in the City of  
2 Chico, California. The Peters filed a cross complaint naming  
3 various defendants, including Borg-Warner Corporation, as  
4 potentially responsible parties due to their alleged manufacture  
5 of dry cleaning materials containing PCE. Pending before the court  
6 is a motion to dismiss pursuant to Federal Rule of Civil Procedure  
7 12(b)(2), 12(b)(4), and 12(b)(5) filed by Burns International  
8 Services Corporation ("Burns"), which, as explained below, has been  
9 mistaken by plaintiffs for the Borg-Warner Corporation named in  
10 their complaint. The court resolves the matter on the parties'  
11 papers without oral argument. For the reasons set forth below, the  
12 motion to dismiss is granted.

13       The present dispute arises from the Peters' attempt to find  
14 and serve the successor-in-interest to Borg-Warner Corporation,  
15 which operated Norge Division ("Norge"), a manufacturer of dry  
16 cleaning machinery, in the 1960s. The Peters have attempted to  
17 serve process on Burns, believing it to be a successor-in-interest  
18 to the Borg-Warner Corporation. Based on the evidence submitted,  
19 however, it is clear that Burns is not a successor-in-interest to  
20 the Borg-Warner Corporation that operated Norge Division.

21       In order to properly serve process on an entity, plaintiffs  
22 "must illustrate that a series of purportedly separate corporations  
23 are in fact bound by continuous chains." Hickory Travel Systems  
24 v. Tui Aq, 213 F.R.D. at 547, 553-54 (N.D. Cal. 2003). Here, Burns  
25 is not bound by a continuous chain to the Borg Warner Corporation  
26 that operated Norge Division. While Burns was also once named

1 "Borg Warner Corporation," its corporate chain of existence is  
2 wholly separate from the chain containing the Borg Warner  
3 Corporation alleged in the complaint to have operated Norge  
4 Division. In other words, this is simply a case of mistaken  
5 identity.

6 As indicated in the certificates of incorporation and  
7 amendment provided by Burns, Burns is a company that evolved from  
8 a distinct entity called AV Hastings Corporation. AV Hastings was  
9 first incorporated in 1987 -- seventeen years after the facts  
10 alleged in the complaint. Decl. of Michael Moirano ("Moirano  
11 Decl.") ¶¶ 9-12. Plaintiffs' confusion stems from a series of name  
12 changes AV Hastings underwent beginning in the 1980s. In 1987, AV  
13 Hastings was renamed Borg-Warner Holdings Corporation, and in 1988,  
14 renamed Borg-Warner Corporation. Id. ¶¶ 9-11. In 1993, its name  
15 was changed again to Borg Warner Security Corporation, and, in  
16 1999, changed once more to its current name, Burns International  
17 Services Corporation. Id. ¶¶ 12, 13.

18 This corporate chain is distinct from the chain containing the  
19 Borg-Warner Corporation that controlled Norge division in the early  
20 1960s. That Borg-Warner Corporation ceased to exist in 1987, when  
21 it merged into BW Transmissions & Engine Components Corporation,  
22 with BW Transmissions & Engine Components Corporation serving as  
23 the surviving entity. Moraino Decl. ¶¶ 5, 14. This merged entity  
24 underwent a series of name changes and eventually became known as  
25 Borg Warner Morse Tec Inc., a company that still exists today. Id.  
26 ¶¶ 5-8.

1       The Peters maintain that Burns is a successor-in-interest to  
2 a company that operated Norge based on the following theory.  
3 Plaintiffs allege that the Norge Division became part of Borg  
4 Warner Security Corporation before being sold to Fedders  
5 Corporation in 1968. They base this allegation solely upon the  
6 following statement from Fedders' discovery response:

7       Fedders admits that it is a successor-in-interest to  
8 Norge Sales Corporation, Inc. which was subsequently  
9 made a division of Borg-Warner Security Corporation and  
then sold to Fedders Corporation in 1968.

10 Decl. of Joseph Adams. ("Adams Decl."), Ex. L 3:9-12. Because  
11 there is an entity named Borg Warner Security Corporation within  
12 Burns' corporate history, plaintiffs claim that Burns' is therefore  
13 a successor-in-interest to an entity which controlled Norge  
14 division.

15       As Burns argues, however, the inclusion of the word "Security"  
16 within the name of the company that sold Norge to Fedders is plain  
17 error. The Borg Warner Security Corporation to which Burns is a  
18 successor was not (and could not have been) involved in the  
19 transaction concerning Norge, for the following reasons.

20       First, the 1968 purchase agreement for Norge Division, which  
21 plaintiffs themselves have provided, indicates that the sale of  
22 Norge to Fedders was not completed by an entity named Borg Warner  
23 Security Corporation, but rather an entity simply named Borg Warner  
24 Corporation. Adams Decl. ¶ 6, Ex. C. A Wall Street Journal  
25 article detailing the sale, dated July 3, 1968 also lists "Borg  
26 Warner Corporation" as the seller, with no mention of an entity

1 called Borg Warner Security Corporation. Id., Ex. C. This  
2 information is consistent with Burns' characterization of the  
3 corporation's history.

4 Second, Burns presents evidence that the entity called Borg  
5 Warner Security Corporation to which Burns is a  
6 successor-in-interest did not exist until 1993, many years after  
7 the sale of Norge to Fedders was made. Moraino Decl., Ex. F  
8 (certificate of amendment showing name change to Borg Warner  
9 Security Corporation, dated 1993). Plaintiffs have not presented  
10 evidence to refute any of this information or to otherwise  
11 establish that Borg Warner Security Corporation existed before  
12 1993.

13 In short, Burns is not a successor-in-interest to the  
14 Borg-Warner Corporation that operated Norge Division, and is  
15 therefore not a proper party to this action. See Hickory Travel  
16 Systems, 213 F.R.D. at 553-54. Accordingly, the court orders as  
17 follows:


18 1. Burns' motion to dismiss (Doc. 225) is GRANTED.

19 2. The hearing on the motion to dismiss currently set for  
20 August 13, 2007 is VACATED.

21 3. The default judgment entered against Borg-Warner  
22 Corporation (Doc. 208) is VACATED.

23 IT IS SO ORDERED.

24 DATED: August 3, 2007.

25  
26   
LAWRENCE K. KARLTON  
SENIOR JUDGE  
UNITED STATES DISTRICT COURT